

**STATE WATER CONTROL BOARD ENFORCEMENT ACTION
SPECIAL ORDER BY CONSENT
ISSUED TO
HENRICO COUNTY WATER RECLAMATION FACILITY
VPDES Permit No. VA0063690**

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 10.1-1185 and 62.1-44.15(8a) and (8d), between the State Water Control Board and Henrico County, for the purpose of resolving certain violations of environmental law and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Va. Code” means the Code of Virginia (1950), as amended.
2. “Board” means the State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality.
5. “Order” means this document, also known as a Consent Special Order.
6. “Henrico County” means a political subdivision of the Commonwealth of Virginia

7. “Facility” means the Henrico County Wastewater Treatment Plant located on 9101 WRVA Road in Varina, Virginia, also known as the Henrico County Water Reclamation Facility (WRF).
8. “PRO” means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
9. “Permit” means VPDES permit No. VA0063690, which became effective December 1, 2000, and expires December 1, 2005.
10. “O&M” means operations and maintenance.
11. “SSO” means sanitary sewer overflows.
12. “MGD” means million gallons per day.

SECTION C: Findings of Fact and Conclusions of Law

1. Henrico County owns and operates a wastewater treatment facility in Varina, Virginia. This facility is the subject of VPDES Permit No. VA0063690, which allows Henrico County to discharge treated wastewater into the James River in strict compliance with terms, limitations and requirements outlined in the permit.
2. On February 19, 1998, a Consent Order was issued to Henrico County due to sanitary sewer overflows (SSOs) of sewage from its collection system. The Order required rehabilitation to 9 sewer collection subsystems. On November 23, 1999, a notice of violation (NOV) was issued to the County for failing to meet the schedule in the Order. The County stated that the failure to meet the schedule was due to construction delays and not a lack of diligence. In a letter dated January 8, 2002, Henrico County reported that the projects outlined in the Consent Order have been completed except for one, the Phase 3 Gillies Creek area sewer rehabilitation. The Order requires this last project to be completed by January 1, 2003.
3. On November 2, 2001 a NOV was issued to Henrico County for total suspended solids (TSS), chlorine and carbonaceous biochemical oxygen demand (CBOD) violations. Henrico County reported the violations during the March through August 2001 monitoring periods. Henrico County responded to the NOV on November 9, 2001, stating that the permits ammonia limits require the operators to carry a higher than normal mixed liquor suspended solids (MLSS) in the aeration basins. This process control technique worked well until March of 2001 when high flows due to rain caused a solids wash out and a TSS permit limit violation.
4. On April 16, 2002, the Department issued a NOV to Henrico County for TSS, Total Phosphorous, and Ammonia violations reported during the December 2001 through February 2002 monitoring periods. In addition, the NOV cited Henrico County for 19 sanitary sewer overflows reported from September 1, 2001,

through April 6, 2002. Shortly after the NOV was issued three additional SSOs were discovered to have been reported by Henrico County. 1) On January 30, 2002, an unknown quantity to Turner Run, 2) On February 5, 2002, an unknown quantity from a private line to Hungary Creek, and 3) On February 7, 2002, an unknown quantity to White Oak Swamp.

5. On April 11, 2002, the County reported a raw sewage overflow of 16,000 gallons that entered Cabin Creek.
6. On April 17, 2002, the County reported a raw sewage overflow of 576 gallons that entered Horse Swamp Creek.
7. On April 18, 2002, the County reported a raw sewage overflow of 3,000 gallons that entered Almond Creek.
8. The Department met with Henrico County on April 19, 2002, to discuss the violations. Regarding the effluent violations, Henrico County stated that treatment plant design limitations as well as cold weather prevented complete nitrification causing the ammonia violations. Henrico County also stated that the SSOs cited in the NOV were not due to inflow and infiltration issues, but rather were events that were beyond their control. The issuance of this Consent Order with a schedule for the plant expansion and a corrective action plan for SSOs was discussed.
9. The Department met with the County on June 20, 2002, to discuss the findings above and this Consent Order.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders Henrico County, and Henrico County agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders Henrico County, and Henrico County voluntarily agrees, to pay a civil charge of \$25,500 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall note that it is being made pursuant to this order and shall note the Federal Identification Number for Henrico County. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and sent to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Henrico County, for good cause shown by Henrico County, or on its own motion after notice and opportunity to be heard.

2. This Order only addresses and resolves those violations specifically identified herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
3. For purposes of this Order and subsequent actions with respect to this Order, Henrico County admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Henrico County consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Henrico County declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Henrico County to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Henrico County shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible. An extension shall be granted for any scheduled activity delayed by an event of *force majeure*, which shall mean any event arising from causes beyond the control of the Respondent that causes a delay in or prevents the performance of any of the conditions under this Consent Order including, but not limited to: a) acts of God, fire, war, insurrection, civil disturbance, explosion; b) adverse weather condition that could not be reasonably anticipated causing unusual delay in transportation and/or field work activities, c) restraint by court order or order of public authority; d) inability to obtain, after exercise of reasonable diligence and timely submittal of all applicable applications, any necessary authorizations, approvals, permits, or licenses due to action or inaction of any governmental agency or authority; and e) delays caused by compliance with applicable statutes or

regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence by Henrico County. Events which are not *force majeure* include by example, but are not limited to, unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or any person's failure to exercise due diligence in obtaining governmental permits or fulfilling contractual duties.

Henrico County shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 5 business days of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. Once schedules are approved by the Department, they become an enforceable part of this order. Henrico County may elect to substitute projects with an approved schedule provided the Department first approves the substitution in writing.
11. This Order shall become effective upon execution by both the Director or his designee and Henrico County. Notwithstanding the foregoing, Henrico County agrees to be bound by any compliance date which precedes the effective date of this Order.
12. This Order shall continue in effect until:
 - a. January 15, 2007, or
 - b. If Henrico County has completed all requirements of the Order prior to January 15, 2007, it may petition the Regional Director to terminate the Order. The Director's determination that Henrico County has satisfied all the requirements of the Order is a "case decision" within the meaning of the Virginia Administrative Process Act; or

- c. The Director or the Board may terminate this Order in his or its whole discretion upon 30 days' written notice to Henrico County. Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Henrico County from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

13. By its signature below, Henrico County voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of _____, 2002.

Robert G. Burnley, Director
Department of Environmental Quality

Henrico County voluntarily agrees to the issuance of this Order.

By: _____

Date: _____

Commonwealth of Virginia

City/County of _____

The foregoing document was signed and acknowledged before me this _____ day of _____, 2002, by _____, who is
(name)

_____ of Henrico County.
(title)

Notary Public

My commission expires: _____

APPENDIX A

Henrico County shall:

1. Within thirty (30) days of the effective date of this Order, begin development of a formal operation and maintenance (O&M) manual for the wastewater collection system (WWCS). The manual, shall include, but is not limited to the following: 1) a financial plan detailing how operation and maintenance of the WWCS will be funded, 2) personnel charts, including job assignments, 3) lift station inspection and maintenance schedules, 4) a sewer inspection and cleaning program, 5) Inflow/Infiltration evaluations, 6) manhole inspections, 7) detailed logs/records of daily operations, 8) easement/right-of-way maintenance, 9) sewer use and grease ordinance, 10) a spare parts inventory, 11) an overflow response plan, and 12) any other components necessary for proper operation and maintenance of the WWCS.
2. Within three hundred sixty five (365) days of the effective date of this Order, submit to the Department the O&M manual referenced above for review and approval. The manual shall contain a maintenance schedule.
3. Within ninety (90) days of the Department approval date of the O&M manual, begin implementation of the O&M manual and the maintenance schedule.
4. Within sixty (60) days of the effective date of this Order, submit to the Department for approval, a schedule of completion of the following inflow and infiltration (I&I) projects previously identified by the County:

Broadwater Creek Pump Station & EQ Basin	Project No. 560
Strawberry Hill Pump Station	Project No. 564
Gillies Creek Pump Station & EQ Basin	Project No. 567
Willow Lawn Pump Station	Project No. 619
Mayfield Pump Station	Project No. 619
Beverly Hills Shopping Center Rehabilitation	Project No. 506
Delrose Avenue Rehabilitation	Project No. 506
Eaton Avenue Rehabilitation	Project No. 506
Marroit Road Rehabilitation	Project No. 506
Three Chopt Rec. Ass. Rehabilitation	Project No. 506
Butler Street Easement Rehabilitation	Project No. 506
Village Shopping Cntr. Rehabilitation	Project No. 506
Homeview Road Rehabilitation	Project No. 506
Patterson Avenue Rehabilitation	Project No. 506
Lakeside Avenue Sewer Improvements Phase 2	Project No. 506
Lewis Road Rehabilitation	Project No. 506
Broadwater 1 Area Rehabilitation Phase BW02	Project No. 572
Upham Brook (Rt. 1 to VEPCO ESMT)	Project No. 506

Bishop Road Rehabilitation	Project No. 506
Summit Court Rehabilitation	Project No. 506
Rolando Drive Rehabilitation	Project No. 506
Cedarbluff Drive Easement Rehabilitation	Project No. 506
West End Manor Outfall Rehabilitation	Project No. 506
Winnwood Avenue Rehabilitation	Project No. 506
Overton Road Rehabilitation	Project No. 506
Blue Jay Lane Rehabilitation	Project No. 506
Pine Ridge Road Rehabilitation	Project No. 506
Shenandoah Place Rehabilitation	Project No. 506
Lakeside Trunk Sewer closure	Project No. 506
James River Outfall Rehabilitation	Project No. 506

The schedule for this requirement shall not extend past January 15, 2007, and once approved by the Department, will become an enforceable part of this Order. Should any additional work be required that extends beyond January 15, 2007, Henrico County and the Department shall meet and negotiate an amendment to this Consent Order.

5. On January 15, 2003, and every six (6) months until this Order is terminated, submit to the Department a summary report of the status of this Order and any associated schedules.
6. By November 1, 2002, develop and implement a detailed written interim startup program for optimizing operational efficiency of new and existing treatment units during construction of the current upgrade. This program shall be maintained on-site and used to assist operators in complying with the terms, conditions and requirements of the VPDES permit during the upgrade.
7. By October 30, 2002, develop and submit to the Department a preventative action plan to assist treatment plant operators in the diagnosis and treatment of influent constituents that may cause toxicity or inhibition to the sludge biomass.

Pursuant to this Order communications regarding this Order and its requirements shall be addressed as follows:

Frank Lupini
Department of Environmental Quality
Piedmont Regional Office
4949-A Cox Road
Glen Allen, Virginia 23060

Henrico County shall confirm, in writing, completion of the Order requirements to the above address **within five (5) days of completion**.